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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-221677

DATE: July 21, 1986

MATTER OF: Emily R. Cooper - Relocation Expenses -
Service Agreement

DIGEST:

An Agriculture employee, who signed a 1-year service agreement after a relocation at Government expense, left Agriculture after 11 months and accepted employment with the Federal Deposit Insurance Corporation (FDIC). Although the FDIC is not an agency covered by the relocation statutes, we conclude that employment with the FDIC is Government service for the purposes of a relocation service agreement.

ISSUE

The issue presented in this decision is whether an employee who was reimbursed by the Department of Agriculture for relocation expenses and agreed to remain in Government service for 12 months has broken that agreement by leaving Agriculture after 11 months and accepting employment with the Federal Deposit Insurance Corporation (FDIC), a mixed-ownership Government corporation. We hold that while the FDIC is not covered under the relocation statutes, employment with the FDIC is Government service for the purposes of a service agreement under the relocation statutes.

BACKGROUND

This decision is in response to a letter from the Office of Finance and Management, Department of Agriculture, concerning the payment of relocation expenses to Ms. Emily Cooper, a former employee of Agriculture.

In September 1984, Ms. Cooper transferred to a new duty station while employed by Agriculture and was reimbursed for her relocation expenses. In connection with that transfer, she signed a service agreement obligating herself for 1 year of Government service. See 5 U.S.C. § 5724(i) (1982). However, after 11 months, Ms. Cooper accepted employment with the FDIC, and Agriculture questions whether

employment with the FDIC qualifies as Government service since the FDIC is excluded from coverage under the relocation statutes. See 5 U.S.C. § 5721 (1982).

We have received comments from both Ms. Cooper and the FDIC arguing that while the FDIC is not covered under the applicable relocation statutes, employment with the FDIC is clearly Government service.

OPINION

As noted above, an employee who transfers at Government expense must sign a service agreement "* * * to remain in the Government service for 12 months * * *" after the transfer, unless separated for reasons beyond the employee's control and acceptable to the agency concerned. 5 U.S.C. § 5724(i) (1982). Neither the statute nor the applicable regulations contained in the Federal Travel Regulations^{1/} define further the term "Government service", but we note that the Court of Claims has held that "Government service" does not mean "agency service" and that an employee need not remain with the same agency for 12 months in order to fulfill the service agreement. Finn v. United States, 192 Ct. Cl. 814 (1972).

The question posed by Agriculture is whether an employee may fulfill the service agreement by transferring to an agency not within the scope of the relocation statutes. As to whether the FDIC is subject to the relocation statutes, we note that section 5721 of title 5, United States Code, defines "agency" for the purposes of coverage under the relocation statutes and specifically excludes a Government controlled corporation. The Federal Travel Regulations define an "agency" as including wholly owned Government corporations but excluding Government controlled corporations. FTR para. 2-1.4(c)(1).

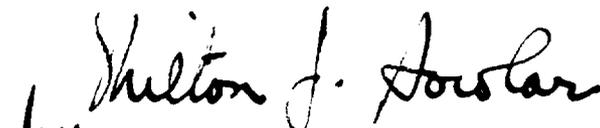
^{1/} Federal Travel Regulations, incorp. by ref., 41 C.F.R. § 101-7.003 (1985).

A Government corporation is defined in 5 U.S.C. § 103(1) (1982) as a corporation owned or controlled by the Government, but a Government controlled corporation is defined as not including a corporation owned by the Government. 5 U.S.C. § 103(2) (1982). Government corporations are also defined in 31 U.S.C. § 9101(1) as either mixed-ownership or wholly owned Government corporations, and the FDIC is defined as a mixed-ownership Government corporation. 31 U.S.C. § 9101(2)(C) (1982). In view of these statutory definitions and the language of the FTR, cited above, we conclude that the term Government controlled corporation refers to mixed-ownership Government corporations. See 25 Comp. Gen. 7 (1945). Therefore, we hold that the FDIC, as a mixed-ownership Government corporation, is excluded from coverage under the relocation statutes.

Although the FDIC is excluded from coverage under the relocation statutes, we believe employment with the FDIC is "Government service" for the purposes of a relocation service agreement. As noted above, the FDIC is a mixed-ownership Government corporation, and the courts have held that the FDIC is a Federal agency for many purposes. See ROCAP v. Indiek, 539 F.2d 174 (D.C. Cir. 1976); and Rauscher Pierce Refsnes, Inc. v. Federal Deposit Insurance Corporation, 789 F.2d 313 (5th Cir. 1986). Our decisions have also recognized the Federal status of the FDIC. See 35 Comp. Gen. 1 (1955); and 25 Comp. Gen. 7, cited above.

Since the relocation statute refers only to "Government service" rather than service with an agency within the scope of the relocation statutes, we hold that employment with the FDIC, a Government corporation, constitutes Government service for the purposes of 5 U.S.C. § 5724(i).

Accordingly, we conclude that Ms. Cooper has not violated her 1-year service agreement by accepting employment with the FDIC.


for Comptroller General
of the United States